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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,839	03/01/2001	John R. White	P 50836	6619

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EXAMINER

DELACROIX MUIRHEI, CYBILLE

ART UNIT PAPER NUMBER

1614

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/786,839

Applicant(s)

WHITE, JOHN R.

Examiner

Cybille Delacroix-Muirheid

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6 is/are rejected.
- 7) ☒ Claim(s) 2 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The following is responsive to Applicant's amendment and declaration received Jan. 23, 2002.

No claims are added. No claims are cancelled. Claims 1-6 are currently pending.

The previous objections to the oath/declaration, the specification and claims 2, 4, 5, set forth in paragraphs 1-4 of the office action mailed June 20, 2001 **are withdrawn** in view of Applicant's amendment and the remarks contained therein.

1. The previous claims rejection under 35 USC 103(a) set forth in paragraphs 5-7 of the office action mailed June 20, 2001 **is withdrawn** in view of Applicant's amendment, declaration and the remarks contained therein. The declaration filed on Jan. 23, 2002 under 37 CFR 1.131 is sufficient to overcome the White et al. reference.

New Ground of Rejection

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Widdowson WO 97/49400.

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Widdowson discloses that CXCR2 (IL-8 β receptor, type II IL-8 receptors) compounds of Formula I inhibit chemotaxis of neutrophils and that said compounds may be useful in treating a variety of diseases in a mammal such as psoriasis, asthma, arthritis, inflammatory diseases, etc. Please see page 20, lines 1-29; page 22, lines 1-7; page 25, lines 31-35.

The claims are anticipated by Widdowson because Widdowson discloses administration of identical agents, i.e CXCR2 inhibitors, to a host using Applicant's method steps. Accordingly, inhibition of T-cell mediated and neutrophil chemotaxis is inherent.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widdowson, supra.

Widdowson as applied above.

Widdowson does not specifically disclose administering a compound which binds the CXCR1 receptor; however, it would have been obvious to one of ordinary skill in the art to modify the methods of Widdowson to additionally administer CXCR1 compounds because Widdowson which suggests that the CXCR1 receptor (IL-8alpha or type 1 receptor) is also involved in the IL-8 related chemotaxis of neutrophils and T-cells, and compounds which inhibit IL-8 receptor binding would be useful in treating conditions associated with increased IL-8 production (please see page 2, lines 30-34). One of ordinary skill in the art would reasonably expect inhibitors of CXCR1 to also block the chemotaxis of neutrophils and T-cells.

Claims 2 and 5 are objected to as being dependent upon a rejected base claim.

Conclusion

Claims 1, 3, 4, 6 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



April 22, 2002



Cybille Delacroix-Murphy
Patent Examiner Group 1600